
FINDINGS OF FACT AND RECORD OF DECISION

ENVIRONMENTAL ASSESSMENT WORKSHEET

for

Linden Corner

Location: 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South, City of Minneapolis, Hennepin County, Minnesota.

Responsible Governmental Unit (RGU): City of Minneapolis

Contact Information:

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BACKGROUND AND SUPPORTING INFORMATION

On January 9, 2012, the City of Minneapolis received a petition forwarded from the Minnesota Environmental Quality Board (EQB) that had been filed by Jane Prince. The petition requests the preparation of an Environmental Assessment Worksheet (EAW) for the project known as Linden Corner proposed at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South. The EQB determined that the City is the appropriate Responsible Governmental Unit (RGU) for the decision on the petition (**Attachment 1**). The EQB published the notice in the EQB Monitor on January 9, 2012, that the City was assigned as the RGU pursuant to Minn. Rules 4410.0500 Subpart 3. The full petition and associated petition materials have been attached for reference (**Attachment 2**).

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It is undisputed that the proposed project does not meet any of the mandatory EAW categories contained in Minn. Rules 4410.4300. Minn. Rules 4410.1000, subp. 3(B) indicates that a discretionary EAW shall be prepared in response to a citizen petition only when 1) the proposed project is not exempt under Minn. Rules 4410.4600 and when 2) the RGU determines that the proposed project may have the potential for significant environmental effects. The individual component characteristics of this proposed project would be exempt from environmental review. Forty residential units would be exempt under the residential development category exemption of Minn. Rules 4410.4600, subp. 12(A)(4). The commercial component, 12,363 sq. ft. of commercial space, meets the commercial development category exemption of Minn. Rules 4410.4600, subp. 10(A)(3). However, there is no exemption category specifically applicable to a mixed-use project. Although legal staff believes the project is arguably exempt and preserves this argument in the event of future legal action, Planning staff is prepared to address the merits of the citizen petition today.

A. PROJECT DESCRIPTION

The site is located on the northwest corner of the intersection of Upton Avenue South and West 43rd Street in the Linden Hills Neighborhood in Southwest Minneapolis. The site is comprised of five separate parcels of land; 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South. The property located at 4250 Upton is occupied by a two-story office building; 4264 Upton is occupied by Famous Dave's restaurant and the remaining properties are occupied by surface parking lots. The applicant is proposing to construct a mixed-use building including 40 dwelling units and 11,227 square feet of ground floor commercial space on the site.

The proposed development would be a five-story building with two levels of below ground parking. The 11,227 square feet of ground floor commercial space is proposed to be broken up into eight individual tenant spaces. One space will be designated for a 108-seat restaurant, six spaces will be designated for retail tenants and one space will be designated for an office tenant. The unit mix includes 13 one-bedrooms, 17 two-bedrooms, eight three-bedrooms and two penthouse units. The development would also include a 12-space surface parking area, a patio area and an open yard area for the residents.

There will be a total of 135 parking spaces on the site. Of the 135 spaces, 123 will be located in two levels of below ground parking and 12 will be located towards the back of the building outside. The parking requirement for the residential portion of the development is 40 spaces. The 60 spaces located on the lowest level of the parking garage will be reserved for the residents of the building. The remaining 63 enclosed parking spaces and the 12 surface parking spaces will be reserved for the commercial portion of the development. The parking requirement for the commercial portion of the development is 47 spaces. The applicant is also proposing to honor existing parking agreements for 25 spaces within the building after the development is complete. There will also be bicycle parking spaces provided within the building for the residents and outside of the building for guests and retail customers.

The applicant has completed a Travel Demand Management Plan (TDMP). The plan found that all intersections included within the study area will operate acceptably at Level of Service B or

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better in the weekday a.m. and p.m. peak hours with the addition of the development traffic and that there is adequate parking being provided on the site.

The entire development site is subject to the C1 zoning regulations, although the landlocked parcel located at 4242 Upton Avenue South is zoned R4, Multiple-family District, pursuant to Section 535.210, Lots containing two or more zoning classifications.

On December 16, 2011, the Minneapolis City Council adopted a text amendment making multiple-family residential developments a permitted use in all base zoning districts. Given this, no conditional use permit is required to allow 40 dwelling units on the property.

A conditional use permit to increase the height of the building from the permitted three stories or 42 feet to five stories or 59 feet, a variance of the Linden Hills Overlay District to allow the building to be setback more than eight feet from both Upton Avenue South and West 43rd Street, a variance to allow bicycle racks and a vehicle height limiter (an overhead bar with columns) in the required front yard setback along Upton Avenue South, and site plan review are required.

The other application that is required for this development is a vacation of a trapezoidal piece of right-of-way that is located directly on the corner of Upton Avenue South and West 43rd Street. The right-of-way area is currently used as a public gathering spot. The applicant is proposing to create a public gathering spot in the boulevard along Upton Avenue South just north of West 43rd Street.

B. ARGUMENTS OF THE PETITION

The petitioner makes several arguments in support of requiring an EAW prior to the City's consideration of the land use applications for the site. It is undisputed that the project does not meet any of the mandatory EAW categories contained in Minn. Rules 4410.4300; therefore, it is implied that the petitioner is urging the City to order the preparation of a discretionary EAW. According to the petitioner, the petition is based on the project's location adjacent to the Lake Harriet shoreland area, and its potential environmental impacts including stormwater run-off, groundwater contamination, noise, car traffic and visual impacts.

B. FINDINGS REQUIRED BY THE RULES OF THE EQB

The Rules provide that the designated RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the City demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate that the project may have the potential for significant environmental effects. The following factors must be considered:

A. Type, extent, and reversibility of environmental effects;

B. Cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is

significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;

C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and

D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

The petitioners cite 14 criteria that they believe will result in the potential for significant environmental effects should the project be constructed which include:

- (1) Lakes. The project's impact on the long term health and well-being of Lake Harriet.
- (2) Erosion. The lack of erosion control plans for the project.
- (3) Stormwater management. The project's impact on the water table and nearby residential areas.
- (4) Wildlife impacts. The project's impact on wild birds.
- (5) Water quality. The project's impact on the water table and potential underground streams.
- (6) Geological hazards. The project's impact on possible sinkholes, shallow limestone formations or karst conditions.
- (7) Soil contamination, hazardous waste and storage tanks. The project's impact on contaminated soils during construction.
- (8) Increased car and truck traffic. The project's impact on increased vehicular traffic from the project, and increased standing vehicular traffic due to congestion that cannot be handled by existing roadways.
- (9) Odors, dust and air quality. The project's impact on dust contaminate during demolition, excavation and construction.
- (10) Noise. The impacts of construction noise to neighboring residences and businesses.
- (11) Visual impacts and comprehensive plan. The impacts of the building on the surrounding area.
- (12) Impact on infrastructure and public services. The project's impact on fire response for existing residences and businesses and impacts of lane closures during construction.
- (13) Required permits.
- (14) Nearby resources. The project's impacts on surrounding architectural resources, parking, scenic views.

A. Type, extent, and reversibility of environmental effects;

The environmental effects identified in the petition are visual, localized, and can be mitigated through the City's land use application process. The identified effects are reversible until the

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potential final discretionary approvals of each phase of the proposed project are granted through the City approval process. Each phase will require City approvals including but not limited to the Planning Commission, Zoning and Planning Committee and City Council.

B. Cumulative potential effects of related or anticipated future projects;

All major future redevelopments within the area will be considered through the formal land use application process that was applied to this project. The City's existing regulatory process and framework captures and evaluates development proposals not only from a Planning perspective, which encompasses community planning, heritage preservation and development services analysis, but also includes evaluations by the Public Works Department related to stormwater management, sewer design, traffic, streets, water, right-of way, etc. This has and will continue to allow the City to manage potential cumulative effects of future development within the vicinity and throughout the City as a whole.

C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and

The City's formal land use application process is comprehensively administered by City Staff and implemented by experienced Commissions and the City Council. The City's existing regulatory process and framework captures and evaluates development proposals not only from a Planning perspective which encompasses community planning, heritage preservation and development services analysis but also includes evaluations by the Public Works Department related to stormwater management, sewer design, traffic, streets, water, right-of way, etc. Any potential environmental effects are mitigated by the City's formal development review efforts.

D. The extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

Redevelopment of this type within an urban setting is neither unique nor unanticipated. Residential, commercial and mixed-use developments that have been significantly more intense have been the subject of EAWs and EISs as well as specific permitting processes. Based on these studies, the environmental effects of this redevelopment can be anticipated and controlled by the City's formal land use application and regulatory processes.

DECISION ON THE NEED FOR AN ENVIRONMENTAL ASSESSMENT WORKSHEET

Based on the information in the above analysis, the City of Minneapolis concludes the following:

1. This "Findings" document and related documentation were prepared in compliance with the procedures of the Minnesota Environmental Policy Act and Minnesota Rules, Parts 4410.1000 to 4410.1700.
2. The project does not meet any of the mandatory EAW thresholds contained in Minn. Rules 4410.4300.

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3. If the individual components (residential/commercial) of this mixed-used project were proposed standing alone, both would be exempt from environmental review pursuant to Minn. Rules 4410.4600.
4. The proposed project lies outside the boundaries of the Shoreland Overlay District. Minneapolis Code of Ordinances § 551.450. The project will be located over 1,000 feet from the ordinary highwater mark of Lake Harriet.
5. The petitioners failed to meet their burden of proof that the project may have the potential for significant environmental effects. Although there are many arguments presented, they are largely anecdotal and unsupported by compelling evidence.
6. The City of Minneapolis makes the finding that the petition for an EAW for the Linden Corner project on the property located at 4242, 4246, 4246 ½, 4250 and 4264 Upton Avenue South is denied.
7. The City of Minneapolis City Council shall adopt the proposed Findings of Fact and Record of Decision document.

Attachments:

- 1) Letter from the EQB
- 2) Citizen Petition for EAW